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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KINTETSU WORLD EXPRESS (U.S.A.), INC.,

Plaintiff,

- v. -

DIALECTIC DISTRIBUTION LLC,

Defendant.

1:21-CV- ()

COMPLAINT

Plaintiff, KINTETSU WORLD EXPRESS (U.S.A.), INC. (“KWE”), by its undersigned attorneys, complaining of Defendant, DIALECTIC DISTRIBUTION LLC (“DDLLC”), states and alleges the following.

PARTIES

1. KWE is a corporation organized and existing under, and existing by virtue of, the laws of the State of California with a principal place of business at One Jericho Plaza, Suite 100, Jericho, New York 11753.

2. KWE is in the business, inter alia, of providing end-to-end logistics services and distribution services across the globe, including international air forwarding, international ocean forwarding, third-party logistics services, import customs brokerage and compliance, inland cartage and others.

3. DDLLC is a limited liability company organized under, and existing by virtue of, the laws of the State of New Jersey with a registered office at 1275 Bloomfield Avenue, Building 8, Unit 66, Fairfield, New Jersey 07004.

4. DDLLC is in the business, inter alia, of sales and distribution of merchandise, principally consisting of consumer electronics.

5. Zachary Zeltzer (“Zeltzer”) is the sole Member of DDLLC.

6. Zeltzer is a citizen and resident of the State of New Jersey.

JURISDICTION

7. The Court has subject matter jurisdiction of this action based on the diversity of citizenship of the parties and the amount in controversy pursuant to 28 U.S.C. § 1332, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

VENUE

8. Venue in this district is proper based on the terms of a written agreement pursuant to which the parties consented to the jurisdiction of this Court. A copy of the agreement is attached hereto as Exhibit 1 and incorporated herein (“Agreement”).

FIRST CAUSE OF ACTION **ACCOUNT STATED**

9. In and about the period of May 2020 through August 2020, DDLLC engaged KWE to provide logistics services including air freight forwarding, customs brokerage, and others.

10. KWE performed the services DDLLC requested, and regularly invoiced DDLLC for the charges and expenses incurred in connection therewith.

11. A list of those of KWE's invoices to DDLLC that remained unpaid as of August 31 2020 ("Invoices"), in the total amount of \$2,258,897.79, for the services KWE performed and the advances it made on DDLLC's behalf is attached hereto and marked Exhibit 2.

12. DDLLC received and retained KWE's Invoices identified in Exhibit 2.

13. DDLLC never objected to the Invoices.

14. DDLLC failed to pay KWE's invoices in full despite due demand.

15. After applying all unallocated payments received from DDLLC to the \$2,258,897.79 principal amount of the Invoices, there remains outstanding the principal sum of \$1,638,897.79.

16. By reason of the foregoing, an account has been duly stated between KWE and DDLLC, upon which DDLLC owes KWE the principal sum of \$1,638,897.79, plus interest thereon.

SECOND CAUSE OF ACTION
BREACH OF AGREEMENT

17. KWE repeats and realleges each allegation contained in paragraphs 1 through 16 above as if fully set forth at length herein.

18. Upon DDLLC's failure to pay the Invoices in full, KWE asserted a carrier's lien on other goods then in KWE's possession, as acknowledged in the Agreement.

19. The Parties then negotiated a payment plan by which DDLLC was to satisfy its outstanding obligations to KWE. The payment plan was memorialized in the Agreement and executed by Zeltzer on behalf of DDLLC.

20. Pursuant to the terms of the Agreement, DDLLC agreed to pay KWE a total of \$2,258,897.79.

21. DDLLC made the first payment required by the terms of the Agreement, in the amount of \$250,000, and KWE released its lien upon the property of DDLLC then in its possession.

22. After April 1, 2021, and without legal excuse or waiver by KWE, DDLLC failed to make any payment required by the Agreement, and has failed to make other payments as required by the Agreement.

23. Pursuant to the terms of the Agreement, upon default in making any required payment, the entire outstanding principal of the obligation became immediately due and payable.

24. After applying all unallocated payments received from DDLLC to the \$2,258,897.79 principal amount of the Invoices, there remains due and outstanding a balance of \$1,638,897.79.

25. KWE duly demanded payment, but DDLLC has failed and refused to make payment.

26. Pursuant to the terms of the Agreement, KWE is entitled to recover prejudgment interest on the sums in default and its counsel fees and costs in this action.

27. By reason of DDLLC's breach of the Agreement, KWE has sustained damages in the amount of \$1,638,897.79 plus interest thereon and KWE's counsel fees and costs in this action.

THIRD CAUSE OF ACTION
UNJUST ENRICHMENT

28. KWE repeats and realleges each allegation contained in paragraphs 1 through 27 above as if fully set forth at length herein.

29. DDLLC received the benefits of the services rendered and expenses incurred by KWE.

30. Despite due demand for payment thereof, DDLLC has failed and refused to pay the balance due of \$1,638,897.79.

31. It would be inequitable and unjust for DDLLC to have received the benefit of KWE's services and disbursements without making full payment therefor.

32. By reason of the foregoing, DDLLC has been unjustly enriched in the principal sum of \$1,638,897.79 for which KWE is entitled to be compensated in full, plus interest thereon.

WHEREFORE, KINTETSU WORLD EXPRESS (U.S.A.), INC. demands judgment in its favor and against DIALECTIC DISTRIBUTION LLC as follows:

(a) on its First Cause of Action for the sum of \$1,638,897.79, plus prejudgment interest at 9% per annum from the date of each invoice to the date of judgment;

(b) on its Second Cause of Action for the sum of \$1,638,897.79, plus prejudgment interest at 9% per annum from the April 1, 2021 date of the date of default in making required payments pursuant to the Agreement to the date of judgment, together with its attorney's fees and costs of this action;

(c) on its Third Cause of Action for the sum of \$1,638,897.79, plus prejudgment interest at 9% per annum from the date of each invoice to the date of judgment and

for such other and further relief as to this Court shall appear just and proper in the circumstances.

Dated: New York, New York
November 18, 2021

KENNEDY LILLIS SCHMIDT & ENGLISH
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By:



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